was a 20 m.p.h. area but what evidence was adduced to substantiate it? None whatsoever."

On this I have two observations to make.

The first is that the Magistrate was bound by section 57(1)(a) of the Evidence Ordinance, 1950 to take judicial notice of Legal Notification No. 44 of 1956 which is a regulation having the force of law and which imposes a speed limit of 20 miles an hour on Princes Road from its junction with Batu Road to its junction with Circular Road. This Notification was quoted in the charge; and, even if it had not been, it was the Magistrate's business to ascertain whether or not it existed, for the slightest exercise of commonsense would have suggested that there would be some such restriction on a busy road like Princes Road.

In the second place, the refusal to accept the evidence of the Police witness was very offensive. That witness said there was a 20 miles per hour speed limit in force. His evidence was not accepted and the only reason stated for refusing to accept it was that no evidence was "adduced to substantiate it". The witness is a traffic policeman, presumably by reason of his rank of some experience. He was unlikely to be mistaken and to refuse to accept his evidence on a point like this on the ground that it was not "substantiated" was neither more nor less than to call him a liar.

If Magistrates are going to adopt this sort of attitude to Police evidence in connection with road traffic cases there will be an end to all law enforcement in the country. When a Police witness says something that is not inherently improbable his evidence must in the first instance be accepted. If he says he saw a cow jumping over the moon his evidence is, of course, not to be accepted, but if he says he saw a cow wandering along one of the main streets of Kuala Lumpur (the sort of thing we all see every day of our lives) there is not the slightest justification for refusing to believe him. Of course if his evidence is contradicted by other evidence or is shaken by cross-examination then it becomes the business of the Magistrate to decide whether or not it should be accepted. In the absence of contradiction, however, and in the absence of any element of inherent improbability the evidence of any witness, whether a Police witness or not, who gives evidence on affirmation, should normally be accepted.

As regards the present appeal, the order of acquittal is set aside.

*Order of acquittal set aside.*

## PUBLIC PROSECUTOR v. YEOH THEAN HOCK

[A. Cr. J. (Hepworth J.) March 13, 1962]

[Penang — Criminal Appeal No. 4 of 1962]

*Criminal Law and Procedure — Police supervisee — Failure to report at right time and place — Criminal Procedure Code (Cap. 21), s.14 — Sentence.*

*Criminal Law and Procedure — Imprisonment in course of police supervision term.*

In this case the respondent, a police supervisee, had been convicted in the Magistrate's Court, Penang, of failure to report at the right time and place, and was sentenced to one day's imprisonment. The Public Prosecutor appealed on the ground that the sentence was manifestly inadequate.

**Held:** in Penang where the Straits Settlement's Criminal Procedure Code (Cap. 21) applies, where a person is subsequently imprisoned during the course of a term of police supervision the period of police supervision continues to run during the imprisonment. The period of police supervision relating to the offence charged having expired prior to the date upon which such offence was alleged to have been committed, the appeal should be dismissed and the conviction quashed.

*Per Curiam:* Where a police supervisee fails without any or any adequate excuse to report at the appropriate time and place and is properly convicted of an offence to that effect a sentence of one day's imprisonment is manifestly inadequate.

CRIMINAL APPEAL.

*Wan Suleiman bin Pawan Teh* (Deputy Public Prosecutor) for the appellant.

Respondent in person.

**Hepworth J.:** This was an appeal by the Public Prosecutor against sentence. The respondent had been convicted in the Magistrate's Court, Penang, of the offence under section 14 of the Criminal Procedure Code of failing, as a person subject to the supervision of the Police, to report at the right time and place. On conviction the respondent had been sentenced to one day's imprisonment. The Public Prosecutor appealed on the ground that the sentence was manifestly inadequate.

At the outset of the appeal the learned Deputy Public Prosecutor very properly drew my attention to a point of law which he said might, and in fact did, show that the conviction was wrong.

Under the Criminal Procedure Code of the former Federated Malay States (F.M.S. Cap. 6) the provisions relating to orders of police supervision are contained in section 295 and subsection (ii) of that section reads:—

"(ii) When any person subject to the supervision of the police is, while still subject to such supervision, sentenced to a term of imprisonment within the Federated Malay States any term spent in prison shall be excluded from the period of supervision."

The provisions as to police supervision in the Criminal Procedure Code of the former Straits Settlements (S.S. Cap. 21) are contained in section 12. Nowhere in section 12 do there appear provisions in any way equivalent to the provisions of subsection (ii) of section 295 of the F.M.S. Criminal Procedure Code. The learned Deputy Public Prosecutor was not able to draw my attention to any other provisions of any other law which have an effect similar to that of this subsection (ii). He did submit, but without a great deal of confidence, that section 5 of the S.S. Criminal Procedure Code might assist. This section reads as follows:—

"5. As regards matters of criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force in the States the law relating to criminal procedure for the time being in force in England shall be applied so far as the same does not conflict or is not inconsistent with this Code and can be made auxiliary thereto."

In my opinion, however, section 5 is of no assistance, because it does not say that the law relating to criminal procedure in the F.M.S. Criminal Procedure Code shall be applicable where there is no special provision in the S.S. Criminal Procedure Code. It says that where there is no special provision in the S.S. Criminal Procedure Code the law relating to criminal procedure for the time being in force in England shall be applicable. However, the learned Deputy Public Prosecutor was not able to draw my attention to any legislation in England which permitted any Court to make an Order for police supervision or anything equivalent thereto.

Reference to the Criminal Procedure Code at present in force in Singapore shows that in section 15 there is a subsection (3) which corresponds with subsection (ii) of section 295 of the F.M.S. Criminal Procedure Code. In *Mallal's Criminal Procedure*, 4th edition, the footnote to section 15 states that formerly if a person subject to the supervision of the Police was subsequently imprisoned the period of supervision continued to run during imprisonment. This was undesirable particularly when the subsequent offence was one in respect of which supervision could not be ordered. Subsection (3) therefore was enacted to provide that such period of imprisonment should be excluded from computation of the period of police supervision.

I am of the opinion therefore that in Penang, where the S.S. Criminal Procedure Code applies, where a person is subsequently imprisoned during the course of a term of police supervision the period of police supervision continues to run during the imprisonment.

The learned Deputy Public Prosecutor conceded in the present case that, if this is so, the period of police supervision relating to the offence charged had expired prior to the date upon which such offence was alleged to have been committed. This being so I dismissed the appeal and quashed the conviction and sentence.

I should make it clear however that I am in complete agreement with the learned Deputy Public Prosecutor that where a police supervisee fails without any or any adequate excuse to report at the appropriate time and place and is properly convicted of an offence to that effect a sentence of one day's imprisonment is manifestly inadequate. The supervisee would never bother to report if he knew that the punishment which he was likely to receive for failing to do so would be no more than one day's imprisonment.

*Appeal dismissed. Conviction and sentence quashed.*

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## LEE SAI CHEONG v. WAN LIM CHEONG

[C.A. (Thomson C.J., Hill and Good JJ.A.) April 9, 1962]

[Ipoh — F.M. Civil Appeal No. 21 of 1961]

*Damages — Fatal accident — Loss of expectation of life and of services — Civil Law Ordinance, 1956, ss.7 and 8.*

The plaintiff (respondent in this appeal) is the father and the administrator of the estate of the deceased who was killed in an accident which was due to the defendant's negligence. The plaintiff claimed special damages under section 8 of the Civil Law Ordinance for loss of expectation of life and damages under section 7 for loss of services and special damages. Azmi J. awarded $783 as special damages, $5,000 for loss of expectation of life and dismissed the claim for damages for loss of services. The defendant (appellant in this appeal) appealed on the ground that the damages awarded under section 8 were excessive and the plaintiff cross-appealed against the trial judge's decision with respect to damages for loss of services.

**Held:** (1) as the plaintiff had not suffered any pecuniary loss, he was not entitled to damages for loss of services under section 7 of the said Ordinance;

(2) in awarding damages under section 8 the balance to be struck in such cases cannot be left to be decided by the exercise of judicial discretion in the ordinary way. The only answer lies in some sort of judicial legislation and bearing in mind the insuperable difficulties, the conventional figure for this country at this present time in the case of a young adult should be $3,000 and that view should be accepted by judges.

*Cases referred to:—*

(1) *Bishop* v. *Cunard White Star Co. Ltd.* [1950] P. 240.
(2) *Davies* v. *Powell Duffryn Associated Collieries Ltd.*, [1942] A.C. 601, 617.
(3) *Benham* v. *Gambling* [1941] A.C. 157.
(4) *Flint* v. *Lovell* [1935] 1 K.B. 354.
(5) *Rose* v. *Ford* [1937] A.C. 826.
(6) *Shepherd* v. *Hunter* [1938] 2 All E.R. 587.
(7) *Wise* v. *Kaye* [1962] 2 W.L.R. 96.

COURT OF APPEAL.

*J. D. Donnelly* for the appellant.

*S. A. Raj* for the respondent.

*Cur. Adv. Vult.*

**Thomson C.J.:** This is an appeal from a decision of Azmi J.

The plaintiff is the father and the administrator of the estate of one Wan Thai Thong who was killed on 2nd August, 1957, in an accident